HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

THE NEBRASKA MAXIMUM FREIGHT RATES. — Of the questions that complicate the modern economic system none is more difficult than that of the regulation of rates charged by quasi-public corporations, and, in particular, by railroads. It would seem to have been of primary importance that the extent of the power of the State legislature under the federal Constitution to regulate the rates charged by railroads within its limits should be settled by the United States Supreme Court; but this has not been finally accomplished until the recent case of *Ames* v. *Union Pacific R. R. Co.*, reported in the Chicago Legal News, March 19, 1898. A Nebraska statute prescribed a schedule of maximum rates, which rates, if adopted by the railroad company, would have forced the railroad to operate at a loss, so far as profits within the State were concerned. This statute the court held unconstitutional, on the ground that it worked a deprivation of property without due process of law.

The decision of the court, by Mr. Justice Harlan, although it has been severely criticised, seems to be sound. It is consistent with a line of dicta in analogous cases, which have themselves been distinguished upon dubious grounds, *Reagan* v. *Farmers' Loan and Trust Co.*, 154 U. S. Rep. 362; and the conclusion also follows necessarily from the decision in the case of *Covington & Lexington Turnpike Road Co.* v. *Sandford*, 164 U. S. 578. In the latter case a statute was held invalid which prescribed such rates for the tolls to be charged by turnpikes that the plaintiff, a turnpike company, would have been deprived of all profits. From turnpikes to railroads the step is short. The principles which apply are the same; and it is noteworthy that the turnpike case was decided largely on the authority of the dicta in the previous railroad cases. The argument of those who disagree with the position taken by the Court has been that any State statute properly enacted is "due process of law" within the meaning of the Constitution, and that, if it is necessary that a regulation should be reasonable in order to fall within the limits of the police power of the State, the question is nevertheless a legislative

one, and the action of the State legislature in regard to it is conclusive. This position, however, is slightly inaccurate. In order that a State law may be a valid exercise of the police power, it must be reasonable; and the decision whether it is reasonable or not is in some cases within the province of the federal courts. The question, it is true, is not one of law; but it is a question arising under the Constitution of the United States when the statute causes a deprivation of property, and the courts cannot escape the responsibility of deciding it. In dealing with the matter, the court is in a position similar to that of an appellate court passing upon the facts found by the jury at a trial in the court below; and presumably it can properly hold a State statute invalid only when under no possibility could the statute be considered a reasonable police regulation. *Steenerson* v. *Great Northern Ry. Co.*, 72 N. W. Rep. 713 (Minn.). The Supreme Court of the United States has never explicitly stated this rule, but it seems to have followed it tacitly in all the cases hitherto decided. The principal case, at all events, falls within the rule. The Nebraska statute had no ulterior object beyond the express object of securing fair rates, which must, of course, be fair to the railroads as well as to the public; and since the statute if enforced would have been confiscatory, or practically so, no one could suppose, under the circumstances, that it was a reasonable regulation.

The effects of the decision are as yet problematical. So far as the public and the States are concerned, it can work little hardship. Although legislatures may chafe under the limitation, the public can have no just cause for complaint if railroads are allowed to make reasonable profits. The chief hardship must fall upon the federal courts in being forced to decide questions which are by nature legislative. This evil, however, may not be so great as at first sight appears; for if courts adhere to the rule of holding no statute invalid which is not hopelessly unreasonable, they will offer little encouragement for bringing cases of this class before them. There may be difficulty if parties accept the suggestion of Mr. Justice Brewer in the Circuit Court, and bring suits continually upon statutes once declared unconstitutional, in the hope that conditions may have changed since the last decision; but in practice it is hardly likely that States will leave unrepealed and unaltered upon the books statutes that have been declared invalid, upon the chance that under changed conditions they may again be brought to life. The great merit of the decision is in affirming to railroads their constitutional safeguard against legislative attacks; the question which is still left for the court to face is how far it will pass upon the reasonableness of rates imposed by a State when the rates merely limit, without virtually destroying, the profits of the corporation.

COMMON-LAW COPYRIGHT. — The literary property of a writer in his work is probably supposed by most people to be no sort of legal property at all, apart from the effect of copyright statutes. The right of an author, however, to the exclusive use of a particular form of words originated by him has been treated by the courts for a hundred and fifty years, and probably much longer, as a permanent right of property, quite distinct from the ownership of the manuscript as a physical object. In the cele-